

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

LORRAINE F. BURNS
(Claimant-Respondent)

PRECEDENT
BENEFIT DECISION
No. P-B-8
Case No. 67-4718

S.S.A. No.

THRIFTY DRUG STORES CO. INC.
(Employer-Appellant)

Employer Account No.

The employer appealed from Referee's Decision No. BK-8442 which held the claimant not subject to disqualification for unemployment benefits under the provisions of section 1256 of the Unemployment Insurance Code and the employer's reserve account not relieved of benefit charges under section 1032 of the code on the ground that the claimant voluntarily left her most recent work with good cause. Written argument was submitted by the employer; answering argument has not been received from the claimant.

STATEMENT OF FACTS

The claimant was last employed for approximately ten years as a retail salesclerk by the above named employer. During the last two years of employment, the claimant, according to the testimony of the employer, worked a rotating shift which required that every third Sunday she be on shift from 4:30 p.m. until 1 a.m. and report for work the next day at 7 a.m.

On May 11, 1967, after she reported to work, the claimant requested her supervisor's permission to be

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excused from work on Sunday, May 14. The supervisor explained to the claimant that this date was "Mother's Day" and it was anticipated that the store would be busy. For this reason, the claimant's request was refused. The claimant thereupon voluntarily left her employment.

When she filed her claim for unemployment benefits effective July 9, 1967, the claimant signed the following statement in regard to her reasons for quitting work:

"My boss would work me 4:30 to 1:30 - 5:00 to 2:00 and then he would bring me back the next day at 9:00 in the morning. He wouldn't give me an alternate shift, as was the rule."

She was interviewed in the North Hollywood office of the Department of Employment July 26, 1967. At this time the claimant stated that she had complained to her supervisor about her work shift and requested a change in shifts or a transfer to another store. Nothing came of her complaints or her requests.

The employer's witness testified that the claimant did not complain about the hours she worked nor did she request a transfer to another shift or another store but left work when her request for a day off was refused.

The claimant did not appear at the referee's hearing.

The referee held that the claimant had good cause for voluntarily leaving work because the employer required her to work in violation of certain Industrial Welfare Commission orders. In its written argument, the employer contends that the claimant left work because her request to be excused from work on May 14 was refused and that in applying the provisions of section 1256 of the code, only the reasons given by the claimant for leaving work should be considered.

REASONS FOR DECISION

Section 1256 of the Unemployment Insurance Code provides for the disqualification of a claimant, and

sections 1030 and 1032 of the code provide that an employer's reserve account may be relieved of benefit charges if it is found that the claimant voluntarily left her most recent work without good cause.

We agree with the employer's contentions that in applying the provisions of section 1256 of the code as they concern a voluntary leaving of work we must look to the reasons the claimant had for leaving work; and if these reasons are not of a compelling nature, then good cause may not be found even though it may be revealed that the employer in some respects was in violation of certain provisions of the law regarding conditions of employment. We believe that when issues arise under the voluntary leaving provisions of section 1256 of the code, our sole concern is to decide whether good cause existed for such leaving, and we are not required to investigate the total employment relationship to ascertain if the employer has in any manner violated the Labor Code unless the claimant has left work because of such violation.

In Benefit Decision No. 6805, the claimant was required by her employer to work eleven hours per day for two days a week and eight hours a day for three days per week in violation of section 1350 of the Labor Code. However, she voluntarily left work because the employer refused to grant her time off to meet a dental appointment, informing her that she could have made the dental appointment on her day off. In that case, the claimant's reason for leaving her work was not considered. It was concluded that she had good cause for leaving work because of the employer's violation of the Labor Code even though the claimant did not leave her work for this reason. We believe this decision to be in error to the extent that it found good cause for leaving of work based upon reasons which were not advanced by the claimant, and to this extent the decision is overruled.

We turn our attention now to the case immediately before us.

Section 1350 of the Labor Code provides as follows:

"1350. No female shall be employed in any manufacturing, mechanical, or mercantile establishment or industry, laundry, cleaning, dyeing, or cleaning and dyeing establishment, hotel, public lodging house, apartment house, hospital, beauty shop, barber shop, place of amusement, restaurant, cafeteria, telegraph or telephone establishment or office, in the operation of elevators in office buildings, or by any express or transportation company in this State, more than eight hours during any one day of 24 hours or more than 48 hours in one week."

Section 11345-3(d), Title 8, California Administrative Code provides:

"(d) The eight (8) hours of employment shall be performed within a period of not more than twelve (12) hours. Twelve (12) hours shall elapse between the end of one workday of the employee and the beginning of the next, except when there is a bona fide change of shift, but in no event shall the elapsed time be less than eight (8) hours."

There is some conflict between the claimant's statement of the hours she worked and the employer's testimony regarding the hours of work. We don't believe such conflict is material because in either statement it is clear that the elapsed time between shifts was less than eight hours.

The claimant informed the department that she complained to her supervisor about the shift she was required to work and requested a transfer to another shift or another store. Such requests were not acted upon. The employer's witness at the referee's hearing denied under oath that the claimant made such complaint or request. The claimant did not appear at the referee's hearing, and the information she submitted to the department at the time she filed her

claim was not under oath. We have consistently held that testimony under oath is entitled to more weight than an unsworn statement made to the Department of Employment (Benefit Decisions Nos. 6008 and 6115). We conclude that the weight of the evidence shows that the claimant did not complain to her supervisor in regard to the shift she was required to work nor did she request a transfer to another shift.

Although the claimant quit when her request for a day off was refused, we do not believe that this was the efficient or real cause of her leaving employment and, as pointed out above, we must concern ourselves with this reason for leaving work. When she filed her claim she stated she left work because of the hours she was required to work. She was required to work in violation of section 11345-3(d), Title 8, California Administrative Code, and she quit for this reason.

These facts would ordinarily establish good cause for voluntarily leaving work. However, in this case the record shows that the claimant worked the same shift for a considerable period of time without any complaint to her supervisor as to the hours she was required to work and made no attempt to obtain a transfer to a more satisfactory shift. We believe that an individual genuinely desirous of retaining employment would have informed her supervisor of her dissatisfaction with the hours she was required to work, thus affording the supervisor an opportunity to make a satisfactory adjustment.

The claimant did not do this, but rather summarily left work with no explanation to the employer as to the reasons therefor. The claimant's failure to seek an adjustment prior to her leaving of work negates any good cause she may otherwise have had for so doing. We conclude that the claimant voluntarily left her most recent work without good cause within the meaning of sections 1256 and 1030 of the code.

DECISION

The decision of the referee is reversed. The claimant is subject to disqualification under section

1256 of the code and the employer's reserve account is relieved of benefit charges under section 1032 of the code.

Sacramento, California, April 5, 1968.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

ROBERT W. SIGG, Chairman

GERALD F. MAHER

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